

Consideration of an application by the Wildwood Dam Conservancy District for a Flood Control Revolving Fund loan in the amount of \$160,000 for costs associated with the refinement and clarification of the District Plan

Date: January 12, 2010

**ACTION BY THE NATURAL RESOURCES COMMISSION
FLOOD CONTROL REVOLVING FUND LOAN APPLICATION
WILDWOD DAM CONSERVANCY DISTRICT, MORGAN COUNTY**

Application No. 151

AUTHORITY

An application in the form of a resolution and a verified petition dated November 30, 2009, requesting a loan of \$160,000 from the Flood Control Revolving Fund (FCRF) was submitted by the Wildwood Dam Conservancy District to the Natural Resources Commission (NRC), through the Department of Natural Resources (DNR), Division of Water.

The Flood Control Revolving Fund, I.C. 14-28-5, provides a fund from which loans may be made for an approved flood control program to a municipality, city, town, county or special taxing district in accordance with provisions of the Act and the rules and regulations there under. The administrative control of the fund and the responsibility for the administration for the provisions of the Act are vested with the Natural Resources Commission (*Reference P.L. 53-2008*).

The Indiana Conservancy District Act, IC 14-33-7-7, states:

(a) To pay the costs of establishing a district, including general, legal, and administrative costs and costs incident to preparing the district plan, money may be obtained from one (1) or a combination of the following methods:

- (1) Gifts, loans, or grants from a state or federal agency, or both.
- (2) Gifts from any source.
- (3) The collection of the special benefit tax.
- (4) Borrowing from private or public sources in anticipation of the collection of the tax.
- (5) Advances from the general fund of the county under section 15 of this chapter.
- (6) Borrowing from the economic development fund created by IC 5-28-8 for any of the purposes in IC 14-33-1-1.
- (7) Borrowing from the flood control revolving fund created by IC 14-28-5 for any of the purposes in IC 14-33-1-1.

(b) All persons, agencies, and departments charged with the administration and supervision of funds such as those created by IC 5-28-8 and IC 14-28-5 may make loans and advances to a district.

NEED FOR THE FUNDING

The Wildwood Dam Conservancy District was established by the Morgan Circuit Court on September 24, 2007 and is located east of Mooresville, in northern Morgan County. The Wildwood Dam (DNR file number #55-29) impounds the lake known as Lower Wildwood Lake and is contained within the Wildwood Shores Subdivision.

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The Wildwood Dam is an earthen structure and was constructed in 1964 as a recreational impoundment without the necessary DNR review and approval. The dam is classified as "high"

hazard according to accepted dam safety standards, and the surface area of the lake is approximately 7.7 acres. The unsafe condition of the dam caused it to be the subject of an enforcement action by the Indiana Department of Natural Resources (IDNR). The establishment of the District was necessary to fund repair and maintenance tasks required per IDNR regulations. Currently, the district is working with the IDNR's Dam and Levee Safety Section to correct the deficiencies in the dam that were associated with the court action.

In December 2007 the Wildwood Dam Conservancy District applied for a \$150,000 loan from the Flood Control Revolving Fund (FCRF). This loan was approved in January 2008. In order to have operating funds, the District put a process in place for property tax assessment. Currently these funds are being collected from the freeholders. The current balance on the loan is \$135,000.

Since the District was formed, it has acquired and transferred all property for the dam, lake, common area, and additional lot for access to the dam into the Conservancy District. The District also negotiated a property transfer with Aqua Indiana Sewer Company to allow both their expansion and the District's access to the spillway. However, the District incurred more legal fees than were anticipated.

On March 5, 2008, the District Plan for Wildwood Dam Conservancy District was approved by the Department of Natural Resources. The District Plan provided descriptions and preliminary cost estimates associated with improvements and annual maintenance needed for the dam to allow for continued recreational and aesthetic benefits to the freeholders of the District.

It was later determined that a portion of the data provided by the original engineering company was not sufficient to pursue the permitting process and District Plan would need to be refined by expanding the analysis, design and environmental assessment. The District determined that more expertise was necessary and hired the firm of Christopher B. Burke Engineering Ltd. (CBBEL) as project engineers.

The June 2008 flood that hit Morgan County impacted the Wildwood Dam. The District filed for and received a grant from the Natural Resources Conservation Service (NRCS) to complete an emergency spillway repair. The repair is complete and the District paid 25% of the cost, which was approximately \$30,000. However this depleted their Cumulative Maintenance (Emergency) Fund.

In order to initiate the exceptional benefit tax to fund the project a detailed engineering and cost estimate must be prepared and presented to the court. Currently the Conservancy District does not have the capital needed to retain CBBEL and is asking for an additional \$160,000 from the FCRF.

The District indicates that without the approval of their application to the FCRF, the District would be unable to pursue long term funding with the USDA or other sources and move into the construction phase for the needed repairs to the dam.

PROPOSED USE OF FUNDS

The Wildwood Dam Conservancy District proposes to use borrowed funds to pay for costs associated with the refinement and clarification of the District Plan. In order to move forward with the overall plan to address deficiencies in the dam the Conservancy District must obtain detailed specifications and plans from an experienced engineering firm who can pursue the permitting process through the Department of Natural Resources.

COST ESTIMATES AND AMOUNT OF REQUEST

The Wildwood Dam Conservancy District is requesting a total of \$160,000.00 broken down as follows:

\$120,000	Additional engineering fees
\$ 20,000	2011 FCRF Loan Payment Reserve (if funding is delayed)
\$ 10,000	Legal fees
\$ 10,000	Contingency/Emergency Fund

OPERATION AND MAINTENANCE OF THE PROJECT

The June 2008 flood that hit Morgan County impacted the Wildwood Dam. The District filed for and received a grant from the Natural Resources Conservation Service (NRCS) to complete an emergency spillway repair. This repair has been completed and indicates the District's desire to maintain the dam and address any damage.

It is the intent of the Wildwood Dam Conservancy District to maintain the dam on an ongoing basis because they have a mechanism in place (property taxes based on assessed value) to cover the operations. This District also plans to implement an exceptional benefit tax.

Section 10.00 of the District Plan indicates that because the Wildwood Dam is considered a water holding facility a Cumulative Maintenance Fund was established under IC 14-33-14.

PLAN FOR REPAYMENT

The Wildwood Dam Conservancy District has committed to paying ten (10) annual installments of \$15,000 plus the appropriate interest on FCRF loan applied for in December 2007. One (1) payment has been posted and as of December 8, 2009 the current balance on their loan is \$135,000.

The District indicates that the property tax budget includes enough money to cover the principal and interest for the 2007 loan. The money has been set aside for the 2010 loan payment from 2009 tax revenue. If necessary, the payment in 2011 would be handled the same way.

The Conservancy District intends to pay off the 2007 loan along with newly requested loan when they refinance the entire project in 2010/2011. Bond Counsel has been retained and is working with the USDA Department of Rural Development regarding a long term loan backed by a revenue bond.

For a loan of this amount, the typical repayment schedule for the FCRF would be ten (10) annual installments of \$16,000 plus the appropriate interest of three percent (3%) on the declining balance.

Should permanent financing through the USDA be delayed, the Board of Directors for the Conservancy District will pay the first installment on the loan by reserving \$20,000 of the funds to cover a sizeable portion of the 2011 payment. The actual payment would be \$20,800 (\$16,000 principal and \$4800 interest).

The District will continue with the approved property tax which covers operations of approximately \$25,000 per year and move forward on the planned exceptional benefit tax which is estimated to produce \$40,000 per year.

At this time the Wildwood Dam Conservancy District does not have any documentation regarding the likelihood of receiving funds from the USDA. However email from USDA staff indicates that they believe that funds are available for the project but a possibility exists funds could run out before the end of the fiscal year. Additionally FCRF

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representatives from the District will attend a workshop sponsored by the Office of Community and Rural Affairs regarding the Community Development Block Grant that is available to assist with the repair of dams damaged during the 2008 flood.

ACTION AND RECOMMENDATION

The application satisfies the requirements as set forth in the Flood Control Revolving Fund, I.C. 14-28-5 as follows:

- An application in the form of a verified petition was submitted by the Wildwood Dam Conservancy District consistent with the provisions of IC 14-28-5-9.
- If approved, the borrowed funds will be used to pay for costs associated with the refinement and further development of the District Plan pursuant to IC 14-33-7-7.
- The current balance on Wildwood Dam Conservancy District's 2007 FCRF loan is \$135,000. Therefore this request for \$160,000.00 does not exceed the \$300,000.00 maximum outstanding loan limit specified under I.C. 14-28-5-7.
- According to the DNR Budget as of December 8, 2009, the Flood Control Revolving Fund has a fund balance of \$ 1,162,119. However after January 1, 2010, \$151,000 of these funds will be distributed to the Lake Edgewood Conservancy District as approved in Application No. 150.
- The responsibility for the administration of the provisions and control of the Flood Control Revolving Fund are vested with the Natural Resources Commission.

The Wildwood Dam Conservancy District's application for a loan from the Flood Control Revolving Fund for \$160,000.00 is approved by the Natural Resources Commission.

Robert E. Carter, Jr.
Secretary
Natural Resources Commission

December 4, 2009

Claire Farrand
Treasurer, Board of Directors
Wildwood Dam Conservancy District

Department of Natural Resources
Division of Water
402 W. Washington Street
Room W264
Indianapolis, Indiana 46204

Dear Sir or Madam,

Attached please find copies of our application for funds from the Flood Control Revolving Fund. I would appreciate your efforts to review our application for the January meeting. We appreciate your support of our project so far and are looking forward to completing the it. Please contact me if you find additional information is needed.

Respectfully,



Claire Farrand
Treasurer, Board of Directors
Wildwood Dam Conservancy District
PO Box 172
Camby, IN 46113

317-372-8539

Claire. Farrand@hotmail.com

**Written Consent to the Resolution of the Board of Directors of the Wildwood Damm
Conservancy District**

The undersigned, being the Directors of the Wildwood Dam Conservancy District (the "District"), having been established by the Order of the Morgan County Circuit Court, hereby consent to the following actions to be taken by the District;

RESOLVED, that The Directors of the District deem it is advisable and in the best interest of the District to authorize the preparation of an application for a loan to be submitted to the Indiana Flood Control Revolving Fund established under the authority of Indiana Code 14-28-5.

PASSED AND ADOPTED THIS 30th day of November, 2009

Karla M Hench

Karla Hench, President

Pete Hokansen, Vice- President

Claire Farrand

Claire Farrand, Treasurer

Tina Sunier

Tina Sunier, Secretary

John Heil

John Heil, Board Member

STATE OF INDIANA)
) SS:
COUNTY OF MORGAN)

VERIFIED PETITION FOR A LOAN FROM
THE FLOOD CONTROL REVOLVING FUND

The Wildwood Dam Conservancy District, by its Treasurer, petitioner herein, pursuant to IND CODE 14-33, dated September 24th, 2007, duly enacted by its Amended Order Establishing the Wildwood Dam Conservancy District, (an authenticated copy of said petition attached hereto, made a part hereof, and marked Exhibit "A"), herewith petitions and makes applications to the Natural Resources Commission for a loan in the amount of One Hundred Sixty Thousand (\$160,000) from the Flood Control Revolving Fund, IC 14-28-5.

In support of this application, the petitioner herein submits the following statements or pertinent facts, more fully set forth in supporting documents attached hereto, made a part hereof and collectively marked Exhibit "B".

1. Statement of the need for the proposed flood control program
2. Statement of the need for funds for institution, accomplishing, and administering such flood control program.
3. Statement setting forth a detailed description of the proposed flood control program.
4. Statement of the engineering estimate of cost of proposed flood control program.
5. Statement of the amount of money deemed to be needed.
6. Statement giving assurance that the proposed flood control program will be maintained and operated in a satisfactory manner after the completion of work
7. Statement of proposed plan for repayment of the loan.

This program is for the purpose of protecting the health, safety, and general welfare of the inhabitants downstream of the existing dam and the Wildwood Dam Conservancy District.

By



Claire Farrand
Board Member and Treasurer
Wildwood Dam Conservancy District

VERIFICATION STATEMENT

I hereby verify, under the penalties for perjury, that I have read the foregoing petition and application, together with the Exhibits attached thereto; and that the statements contained herein are true.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Claire Farrand personally appeared before me, a Notary Public, in and for said County and State, this 30th day of Nov 2009, after being duly sworn upon her oath, says the facts alleged in the foregoing affidavit are true.

My Commission Expires

July 28, 2015

Carole M. Hosford
NOTARY PUBLIC SIGNATURE

Carole M. Hosford
NOTARY PUBLIC PRINTED NAME

STATE OF INDIANA)
) SS:
COUNTY OF MORGAN)

MORGAN COUNTY CIRCUIT COURT

Cause No.: 55C01-0608-MI-00518

IN RE THE FORMATION)
OF THE WILDWOOD DAM)
CONSERVANCY DISTRICT)

**Amended ORDER ESTABLISHING
THE WILDWOOD DAM CONSERVANCY DISTRICT
Nunc pro tunc**

This cause was heard in open court on the 14TH of September, 2007 upon the Petition of certain free holders in Morgan County for the establishment of the Wildwood Dam Conservancy District. The hearing was held following the submission of the report of the Natural Resources Commission dated July 17, 2007 as previously filed with the Court pursuant to I.C. 14-33-2-22 and 23. The hearing was held upon proper notice pursuant to I.C. 14-33-2-25. The Court now finds as follows:

1. The Court finds that the evidence does support the statements of the "Amended Petition for the Creation of the Wildwood Dam Conservancy District" and orders the establishment of the Wildwood Dam Conservancy District. Its purpose shall be to restore and maintain State Dam I.D. 55-29, a "high hazard" dam presently deemed unsafe and unlawful by the Indiana Department of Natural Resources. Restoration and maintenance of this earthen dam will promote the general public health, safety and welfare.

2. The Court orders that five Directors serve on the Board of Directors of the Wildwood Dam Conservancy District. Three Directors shall represent the interests of on-lake freeholders, whose individual tax burden is several times greater than that of off-lake freeholders. Two Directors shall represent the interests of off-lake freeholders. The

initial Board of Directors was appointed on September 12, 2007 by the Morgan County Board of Commissioners pursuant to I.C. 14-33-5-1 and I.C. 14-33-5-9, as reflected by the "Notice of Commissioners' Action" filed with this Court. The Court approves the appointments of the five individuals named by the Morgan County Board of Commissioners.

3. The Court divides the District into on-lake and off-lake areas for service by the Directors as proposed in the "Amended Petition for the Creation of the Wildwood Dam Conservancy District."

4. The Court orders that the annual meeting of the Wildwood Dam Conservancy District shall occur at 7:00 p.m. on the last Monday in June of each year as described in I.C. 14-33-5-4.

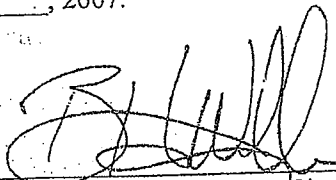
5. The Court finds that necessity exists for the creation of the Wildwood Dam Conservancy District. The only evidence presented confirms that the existing high hazard dam is unsafe and subject to a pending enforcement action by the Indiana Department of Natural Resources to breach the dam. It is undisputed that the Indiana Department of Natural Resources has the authority to and will breach the dam if it is not brought into compliance with Indiana law. The only evidence presented confirms that loss of the dam and the lake it holds will severely impact the value of all properties in the Conservancy District, including the properties on the lake and off the lake. The Court finds that the only alternative to losing the dam and the lake it holds is to restore and maintain the dam in accordance with Indiana law.

6. The Court notes that no objections to establishment of the District were made at the three preceding public hearings held pursuant I.C. 14-33-1 et seq. These

include the hearing in this Court on February 2, 2007, the hearing held at the firehouse nearby the Wildwood Shores Subdivision by Administrative Law Judge Sandra Jensen on June 1, 2007 and the Natural Resources Commission hearing held on July 16, 2007. The Court finds the detailed findings of the Natural Resource Commission supporting establishment of the Wildwood Dam Conservancy District compelling and adopts by reference these findings in full.

7. Restoration and maintenance of State Dam I.D. 55-29 requires organized activity that can best be accomplished by the creation of a Conservancy District. The plan to restore and maintain State Dam I.D. 55-29 is economically feasible. The benefits of creation of the Wildwood Dam Conservancy District will exceed the costs by a substantial margin.

SO ORDERED this SEP 24 2007 day of SEP 24 2007, 2007.


JUDGE, Morgan County Circuit Court

5 9-25-07 tm

RJD

File

D. Maffon + T. Richards

D. Pippin

N. Holleran

P. Jolly

Wildwood Dam Conservancy District
Application for Flood Control Revolving Funds
12/1/2009

Exhibit B

3a. Statement of Need for the proposed flood control program.

As stated in the September 24th, 2007 Order Establishing the wildwood Dam Conservancy District (Labeled Exhibit A), establishment of the Conservancy District is necessary to fund engineering measures and associated costs, including legal costs, to repair and maintain State Dam I.D. 55-29. The dam regulates and holds the lake contained in the conservancy district and is called Wildwood Lake. The Dam is by definition a 'High Hazard' dam. IND CODE 14-27-7.5-8.

During the last two years, since the last loan request, we completed and filed our District Plan, we have acquired and transferred all the property for the dam, lake, common area, and an additional lot required for access to the dam into the Conservancy District. We also negotiated a property transfer with Aqua Indiana Sewer Company to allow both their expansion and our access to the spillway. In addition, we began our property tax process and are collecting operating funds from the freeholders. This has allowed us to maintain the dam and pay the principle and interest from our original loan in 2007 on an ongoing basis.

We have retained three independent appraisers and have a draft of the report to present to the courts for the start of a exceptional benefit tax to fund our project. Submission of this report is contingent upon having a credible project estimate. Long term project funding is being pursued a number of ways, including through a loan from the USDA Rural Development. We began that funding process in May 2009. A revenue bond is necessary for this, and we have retained Sue Beesley with Bingham McHale LLP. We cannot complete the permanent, long term funding described without the detailed engineering and cost estimates proposed in this application.

3b. Statement of the need for funds for institution, accomplishing, and administering such flood control program.

Our immediate need is in the retention of an engineering firm to develop detailed specifications and plans and pursue the permitting process with the Department of Natural Resources. We filed our initial construction permit with the DNR in the summer of 2009. After having the DNR report permit deficiencies to us, we hired C.B.Burke Engineering to do a peer review. Our original engineering firm did not have sufficient expertise to complete this process, so subsequently we have retained C.B.Burke Engineering to be our project engineers. We do not have the capital needed to retain them for the engineering work beyond Phase I. Therefore we are asking for an additional \$160,000 from the Flood Control Revolving Fund.

On November 4, 2009 C. B. Burke Engineering presented a proposal for the project, which is attached as 'C', entitled 'Wildwood Dam Conservancy District Dam Improvements, Professional Services Proposal. The phases and costs are summarized as follows:

Phase 1 – Early Project Coordination (\$5,000)

Phase 2 – Preliminary Engineering (\$40,000) * *These items are required to pursue long term funding with the USDA or other sources.*

Field Inspection

Survey

Environmental Assessment

Geotechnical Analysis

Development of Hydrologic Mmodel

Alternative Development

Opinions of Probable Cost

Preliminary Engineering Report

Phase 3 – Design and Permitting (\$75,000)

Design Development

Design Drawings

Technical Specifications

Engineer's Estimate

Section 401 and 404 Permit Applications

Construction in a Floodway Permit Application

Rule 5 Permit Application

Bidding Assistance

Phase 4 – Construction Observation – This phase would be wrapped into the final project funding and is not needed at this point.

Total Engineering Costs Requested:	\$120,000
2011 FCRF Loan Repayment Reserve (in case funding is delayed)	\$20,000
Legal Fees Payment	\$10,000
Contingency/ Emergency Fund	\$10,000
Total Funds Requested	\$160,000

3c. A detailed description of the proposed program.

Attached please find the detailed contractual agreement between the Wildwood Dam Conservancy District and C.B.Burke Engineering.

3d. An engineering estimate of the cost of the proposed program.

We do not have a total estimate for the repair of the dam, but in order to produce this we must continue the analysis, design, and environmental assessment required for this program. In order to do the final funding proposal, we must continue with the engineering attached in 'C'.

3e. The amount of money that is deemed to be needed. As described in 3b, we are asking for a \$160,000 temporary loan.

3f. Assurance that the project will be maintained and operated in a satisfactory manner

Please see the attached resolution.

In June of 2008 the flood that hit Morgan County impacted our dam. We filed for and received a grant from the NCRS to complete an emergency spillway repair. We completed this repair and paid 25% of the cost, which was approximately \$30,000. We fully intend to maintain the dam on an ongoing basis and continue both our approved property tax base which covers operations of approximately \$25,000 per year and our planned exceptional benefit tax which is estimated to produce another \$40,000 per year.

3g. Plan for repayment of loan.

Our intent is to pay off the 2007 FCRF loan and this new loan when we refinance our whole project in 2010/2011. We have retained bond counsel and been working with the USDA Department of Rural Development regarding a long term loan backed by a revenue bond.

Our permanent financing cannot be established without engineering plans, a permit from the DNR, a known loan source, and an interest rate. Once the total project cost is estimated (as a maximum), we will submit our appraisers report to the court and institute our exceptional benefit tax. We have a draft report that provides the relative value of each freeholder (as a percent of the project). This tax would be instituted by the courts under IC-14-33-8 and would cover the project costs over the period of time of the long term financing, which is expected to be approximately \$40,000 per year.

Our total project estimate to be financed at this point is:

- \$ 140,000 – 2007 FCRF balance
- \$ 160,000 – 2010 FCRF balance (incl engineering Phases I, II, III)
- \$ 500,000 – Construction and Engineering/ Construction Monitoring
- \$ 25,000 – Bond Costs (fixed bid)
- \$ 75,000 – Legal Fees balance
- \$ 100,000 – Contingency
- \$1,000,000 – Total Project Estimate**

During our discussions with the USDA in May of 2009, the following terms were discussed: A \$1,000,000 loan over 40 years at a 4.625% interest rate is \$54,000 per year. This will be paid for with the \$40,000 exceptional benefit tax and \$14,000 of existing property tax, leaving \$11,000 per year for other expenses such as insurance, inspections, and a cumulative maintenance fund.

These funding assumptions are subject to changes in the market which may occur between now and when funding is secured. Therefore, time is of the essence for our district.

Wildwood Dam Conservancy District Resolution
November 30, 2009

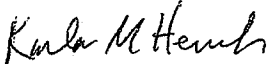
A resolution authorizing the establishment of funds for Cumulative Maintenance

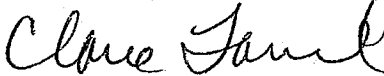
WHEREAS, the Board of Directors desires to maintain our dam on an ongoing basis;
now therefore:


BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WILDWOOD DAM
CONSERVANCY DISTRICT, MORGAN COUNTY INDIANA, THAT:

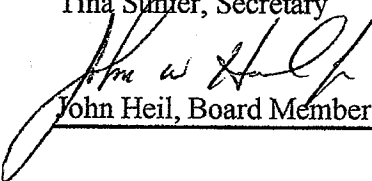
We will begin funding our Cumulative Maintenance Fund at a rate of \$2,000 per year
beginning in 2010 and every year thereafter, until a minimum of \$24,000 is in this
account. We will continue yearly maintenance and required inspections as needed.

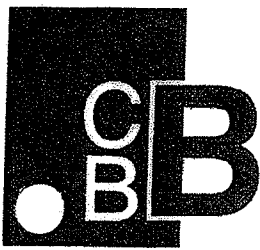
PASSED AND ADOPTED THIS 30th day of November, 2009


Karla Hench, President

Pete Hokansen, Vice- President

Claire Farrand, Treasurer


Tina Sumter, Secretary


John Heil, Board Member



CHRISTOPHER B. BURKE ENGINEERING, LTD.

National City Center Suite 1368 South 115 W. Washington St. Indianapolis Indiana 46204 TEL (317) 266-8000 FAX (317) 632-3306 TOLL FREE (888) 463-1974

November 4, 2009

Karla Hensch, President
Wildwood Dam Conservancy District
12046 North Wildwood Lane
Camby, IN 46113

**Subject: Wildwood Dam Conservancy District Dam Improvements
Professional Services Proposal**

Dear Ms. Hensch:

Christopher B. Burke Engineering, Ltd (CBBEL) is pleased to provide this proposal for professional engineering and planning services related to Lower Wildwood Dam in Morgan County, Indiana. The following is our understanding of the assignment, scope of services, and estimated fee in support of the project.

UNDERSTANDING OF THE ASSIGNMENT

As you are aware, CBBEL was recently retained by the Wildwood Dam Conservancy District (District) to conduct an assessment of the dam rehabilitation design that was prepared by others. This assessment was initiated, at least in part, as a result of two Incomplete Application Notices that the District received from the Indiana Department of Natural Resources (IDNR) in response to an application for a Construction in a Floodway Permit.

Based on this assessment, CBBEL concluded that there were significant deficiencies with the modeling, design concepts, and construction plans for the proposed Lower Wildwood Dam Rehabilitation. It is our understanding that the District is interested in addressing these deficiencies with a revised design for improvements to the dam embankment and spillway system that will meet IDNR dam safety guidelines.

It is also our understanding that the District is interested in submitting an application for federal assistance through the United States Department of Agriculture (USDA) Rural Development (RD). This assistance will require the preparation of an Environmental Assessment document prepared in accordance with a guidance document provided by the USDA RD and Rural Utility Service (RUS).

In order to assist you with meeting these objectives, CBBEL proposes that our services be divided into four major phases. These phases will consist of 1) Early Project Coordination 2) Preliminary Engineering; 3) Design and Permitting; and 4) Construction Observation.



SCOPE OF SERVICES

Services to be provided by CBBEL for this work have been identified as follows:

PHASE 1 - EARLY PROJECT COORDINATION

Task 1.1 - Project Schedule: CBBEL staff will meet with you and your legal counsel to develop an anticipated project schedule that incorporates the time requirements for completing the various financial, engineering, and planning tasks with consideration of any financial constraints of the District. The anticipated project schedule will display the approximate durations and sequence, as well as approximate start and end dates for the major project components from Project Coordination and financing through completion of construction.

Task 1.2 - Coordination with IDNR: CBBEL staff will coordinate and facilitate a meeting with representatives from the District and IDNR to present the anticipated project schedule developed in the previous task. The objective of this meeting will be to seek IDNR's input on the schedule and, if necessary, negotiate any adjustments to the schedule. The goal of this meeting will be to reach consensus with IDNR on the general timeline for completing the project.

Task 1.3 - Assistance with Funding Applications: CBBEL staff will work with the District to provide assistance with completing letters and/or applications, as requested by the District, for various funding mechanisms that the District is pursuing. Our estimated fee on this phase allows up to 10 hours of staff time to assist with efforts towards the funding applications.

Phase 1 Estimated Fee = \$ 5,000

PHASE 2 - PRELIMINARY ENGINEERING

After completion of Phase 1 activities and upon availability of adequate funds to start the engineering and planning aspects of the project, CBBEL will proceed with completion of this Phase and subsequent phases of the project, as directed by the District through a separate written notice to proceed. Phase 2 of the project will include the following tasks:

Task 2.1 - Field Inspection: CBBEL staff will conduct a detailed inspection of the dam and its appurtenant structures. You and other owners or representatives of the property will be invited, and are encouraged, to attend, in order to view first-hand any noted deficiencies. CBBEL staff will inspect the dam crest, upstream and downstream slopes, downstream toe, outlet conduit, abutments, embankment/abutment contacts, emergency spillway, the upstream and downstream watersheds, and downstream channel. CBBEL staff will be looking for potential problem areas, such as settlement, structural cracking, erosion, sinkholes, animal burrows, depressions, seeps, improper vegetation, boils, turbid discharge, foundation movement, vandalism, and related conditions. A detailed dam inspection checklist will be completed to document our field findings. Upon completion of the dam inspection, CBBEL staff will complete the IDNR Inspection Report Form, and compile sketches, photos, and other records from the inspection. This information will be compiled into a brief letter report that will be submitted to you for your review. CBBEL will incorporate recommendations for the repair of any noted deficiencies into the preliminary engineering report.

Task 2.2 - Survey: CBBEL will enter into a subcontract with a licensed surveyor to conduct a topographic ground survey of the dam embankment and spillway system. The ground survey will provide 1-foot contours of the dam and spillway area and is necessary for the development



of accurate quantities during the preliminary engineering phase. The ground survey is also required to develop construction plans during the design phase. In conjunction with the ground survey, aerial mapping including 2-foot contours of the entire perimeter lake area will be obtained to define the flood storage capacity of the reservoir and to determine the flood risks that various dam improvement alternatives may have on properties surrounding the lake.

Task 2.3 - Environmental Assessment: CBBEL will prepare an Environmental Assessment for Class II Actions in compliance with RD/RUS Bulletin 1940-G for the proposed project. In preparing the Class II document CBBEL will review available reference material for the project site, and conduct a site investigation to confirm reference material data as well as to collect new data within the expected footprint of the reconstructed dam. During the site investigation CBBEL will also photograph and note potential hazardous waste sites, karst features, wetland/"waters" areas, potential historic structures, natural features, and relocations. Prior to any onsite investigations, and immediately upon notice to proceed, CBBEL will undertake early coordination by composing letters, with exhibits and attachments, summarizing the scope of this project and identifying potential impacts and mailing the letters to local, state, and federal agencies to solicit their input. To address possible archaeological and historic property issues CBBEL will subcontract with an archaeological subconsultant to complete a Phase 1a Cultural and Historical Resources Investigation and Report for the area to be affected by the dam and spillway improvements. CBBEL will submit a draft Class II Environmental Assessment document to RD/RUS in conjunction with the Preliminary Engineering Report, prepared separately by CBBEL, and make revisions to the draft Class II document based on comments by RD/RUS and/or comments received during the document's public notice period. CBBEL will then provide a final Class II Environmental Assessment document to you.

Task 2.4 - Geotechnical Analysis: CBBEL will subcontract with a qualified geotechnical engineering firm to review the available geotechnical reports and data that have been previously completed on the dam. The information obtained from these reports will be used to complete stability and seepage analyses and to determine the general condition of the existing dam. Recommendations for improving the stability of the embankment will also be provided.

Task 2.5 - Development of Hydrologic Model: CBBEL staff will complete the hydrologic and hydraulic analyses necessary to develop a hydrologic model of the existing dam and spillway system. The calculations required to complete the model include watershed characteristics, design rainfall event data, elevation-area relationship for the lake, and elevation discharge relationships (rating curves) for each spillway. CBBEL will utilize the hydrologic model to determine the existing spillway system capacity and to evaluate potential alternatives for improving the spillways and dam embankment.

Task 2.6 - Alternative Development: In this task, CBBEL staff will develop a list of up to 5 different conceptual dam reconstruction alternatives. Hydrologic and hydraulic analyses will be utilized to size potential spillways. During this task, CBBEL staff will discuss the conceptual alternatives with IDNR officials and other stakeholders to evaluate the regulatory feasibility of each. The alternatives will be judged against various criteria such as financial and institutional considerations, environmental impacts, utility conflicts, accessibility, maintenance, long-term stability, permit-ability, relative cost, and related criteria.

Task 2.7 - Opinions of Probable Cost: CBBEL staff will estimate construction quantities and develop conceptual opinions of probable construction cost for the potential alternatives developed in the previous task.

Task 2.8 - Preliminary Engineering Report: CBBEL staff will produce a brief preliminary engineering report that documents the data collection, analysis, and conclusions generated during the preliminary engineering phase of the project. The report will include a discussion of the various reconstruction alternatives considered, the conceptual opinions of probable construction cost, and a discussion of how the alternatives are impacted by the various criteria. This report will also summarize CBBEL's recommended approach for proceeding with the next phase in the project. We will provide you with a draft copy of the report to review and will make necessary revisions before printing the final report. This report will be the final deliverable for this phase of the contract.

Phase 2 Estimated Fee = \$ 40,000

PHASE 3 - DESIGN AND PERMITTING

It should be noted that there is an inherent amount of uncertainty with the total fee required to complete the design and permitting phase until the specific design features are identified in the Preliminary Engineering Report. The estimated fee provided in this proposal is based on CBBEL's experience with other projects of similar magnitude. CBBEL will reassess their estimated fee for design and permitting at the conclusion of the preliminary engineering phase and will notify the District of any anticipated revisions at that time.

Task 3.1 - Design Development: CBBEL staff will prepare conceptual plans for presentation to you and IDNR. A meeting will be held with you and the IDNR (if desired) at the completion of this task to review the conceptual plans and obtain your input on the design. The conceptual plans will represent approximately 50% completion of the final design drawings.

Task 3.2 - Design Drawings: Using the conceptual plans developed in the previous task, CBBEL will prepare 100% complete drawings to be used for the construction of the selected alternative. The drawings will contain the appropriate plan and profiles, sections, details, and notes based on the nature of the alternative selected. A meeting will be held with you and the IDNR (if desired) to review the 100% complete drawings.

Task 3.3 - Technical Specifications: CBBEL staff will prepare technical specifications for the anticipated construction. The specifications will address the appropriate materials, installation procedures, testing, and quality assurance standards that must be followed by the contractor.

Task 3.4 - Engineer's Estimate: Upon completion of the Drawings and Specifications, CBBEL staff will estimate construction quantities and develop opinions of probable construction cost for the dam improvement design.

Task 3.5 - Section 401 and 404 Permit Applications: CBBEL will complete and submit a Section 401 Water Quality Certification application to IDEM and a Section 404 Department of the Army permit application to the USACE for approval of the proposed project impacts. CBBEL will develop the required exhibits, data, and documentation for the supplemental information required for the Section 401 and 404 permit applications. CBBEL will coordinate the progress and review of the project by the regulatory agencies. A coordination meeting with the regulatory agencies may be necessary if permit issues need to be addressed before and/or after submittal of the permit applications. CBBEL staff will attend up to two additional meetings with the regulatory agencies regarding the permit applications and will supply pertinent support data and information for these meetings.



Task 3.6 - Construction in a Floodway Permit Application: CBBEL staff will prepare and submit the application for a Construction in a Floodway Permit from the IDNR for the proposed improvements. It is assumed that the required adjacent landowner information will be provided by you so that we can submit an official public notice to all applicable properties. CBBEL will periodically check with IDNR after the permit is submitted regarding its status and respond to questions as needed.

Task 3.7 - Rule 5 Permit Application: CBBEL staff will prepare and submit the construction plans to the Morgan County Soil and Water Conservation District (SWCD) to obtain Rule 5 approval for the dam. CBBEL will also complete the required public notice in a local newspaper. Once approval from the local SWCD is obtained and the public notice has been completed, CBBEL will prepare and submit a Notice of Intent (NOI) to IDEM for the Rule 5 permit.

Task 3.8 - Bidding Assistance: CBBEL will prepare a bid package for soliciting contractors and for providing contractual agreements with the selected contractor. The bid documents will also be used for implementing the construction work. We will prepare bidding front-end documents, General Conditions, Special Provisions, a Bid Tabulation sheet, and will attach the Specifications and Drawings. We will assemble bid packages and distribute them to potential bidders. CBBEL will conduct a pre-bid meeting, prepare meeting minutes, issue bid addenda, and evaluate and recommend a bidder.

Phase 3 Estimated Fee = \$ 75,000

PHASE 4 - CONSTRUCTION OBSERVATION

Construction observation services overseen by a licensed Professional Engineer (P.E.) are an essential component of the safe construction of any dam or spillway improvement. Construction observation is also necessary for the P.E. to be able to responsibly sign and certify record drawings which are required as a condition of the IDNR construction in a floodway permit. In order to certify record drawings of the project, CBBEL staff must be present during construction on a consistent part-time basis with a concentrated presence during tasks considered to be critical to the overall safety and performance of the dam. CBBEL will inform the Owner and Contractor during the initial preconstruction meeting of specific tasks determined to warrant closer attention by CBBEL. It is the Owner's responsibility to provide proper notification to CBBEL of when these tasks will occur. The following tasks are required for CBBEL to complete record drawings of the project:

Task 4.1 - Meetings: CBBEL staff will conduct a preconstruction meeting with the necessary stakeholders and the selected contractor. We will also conduct up to 3 monthly progress meetings, a substantial completion meeting and a final completion meeting. CBBEL will facilitate and prepare an agenda and meeting minutes for each meeting.

Task 4.2 - Site Visits: CBBEL staff will conduct site visits an average of one day per week for up to 12 weeks in order to review contractor progress during construction. We will prepare an inspection report and photographic record of each site visit. If more frequent site visits are required, or if the construction duration extends beyond the assumed 12 weeks, CBBEL reserves the right to renegotiate the total fee for this phase.

Task 4.3 - Submittal Review: CBBEL staff will review shop drawings, product data, submittals provided by the contractor as required by the technical specifications. CBBEL will affix their



stamp, signature, and date and will indicate the contractor's requirements for revisions or correction of the submittal.

Task 4.4 - Requests for Information: CBBEL will respond to questions from the contractor and/or owner during construction to provide additional information or clarification on issues related to construction. Each request for information will be documented and a formal response will be returned to the owner and the contractor.

Task 4.5 - Record Drawing Preparation: CBBEL staff will prepare and submit to IDNR Record Drawing documentation of the dam reconstruction. The Record Drawing documentation will be based on field mark-ups to be provided by the contractor as well as CBBEL's own site visits.

Phase 4 Estimated Fee = \$ 33,000

It should be noted that this contract for professional services does not include the following:

- 1) It is assumed that the location of relevant parcel boundaries, easements, and utilities will be marked in the field by others prior to the survey.
- 2) This proposal does not include cost for additional subsurface exploration of the project site. It is assumed that the existing geotechnical information will be adequate to perform any geotechnical analyses that are required.
- 3) Preparation of the Class II Environmental Assessment document does not include any fees associated with Phase I or Phase II Site Assessments, Phase 2a Archaeological Investigations, Karst Impact Mitigation, Noise Analysis, or Section 7 Evaluations. If it is determined that any of these services are required, CBBEL will prepare a proposal for a contract amendment to perform the required services.
- 4) This proposal does not include cost for preparation of a Mitigation and Monitoring Plan to compensate for potential project impacts to wetlands, channels, or forested floodway. If a Mitigation and Monitoring Plan is required, CBBEL will prepare a proposal for a contract amendment to perform the required services.
- 5) This proposal does not allow for CBBEL to provide full-time on-site construction observation. The contractor and owner will be responsible for performing daily construction management services including inspection and materials testing.

ESTIMATED FEE

We have estimated the total cost for these services to be \$153,000. If the value of work accomplished exceeds \$153,000, CBBEL shall assess the remaining work and shall notify you, in writing, of the revised compensation and schedule before continuing with the services. No additional work will be performed until a written contract amendment has been approved by both parties.

We will bill you monthly, on a time and material basis, for assigned tasks in accordance with our attached standard Charges for Professional Services. In addition, our contract will be established in accordance with the attached General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services.

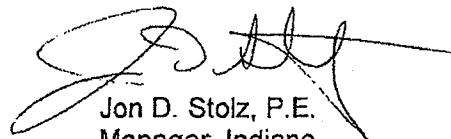
If this proposal meets with your approval, please sign where indicated and return an executed



original to us as our Notice to Proceed for the first phase of the project. The executed Proposal, along with the Estimated Fee, the attached Standard Charges for Professional Services, and the attached General Terms and Conditions constitute the whole of our Agreement. Any modification to any part of this Agreement without prior acknowledgement and consent by CBBEL will make null and void this Agreement. Any time commitment made by CBBEL as part of the Agreement does not begin until CBBEL has received an executed original and upon receipt of written notice to proceed for various phases of the project as the necessary funds become available.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please contact me or Brian McKenna, P.E. at the number listed above if you have any questions.

Sincerely,



Jon D. Stolz, P.E.
Manager, Indiana

THIS PROPOSAL, ESTIMATED FEE, STANDARD CHARGES FOR PROFESSIONAL SERVICE AND GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY WILDWOOD DAM CONSERVANCY DISTRICT:

Signature: Claire Farrand
Name (Printed): Claire Farrand
Title: Treasurer, Wildwood Dam Conservancy District
Date: 11/30/09

Enclosures: Standard Charges for Professional Services
General Terms and Conditions

OPN# 01.P090566.0000
JDS/bwm

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CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
INDIANA PROJECTS
JANUARY 2009

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
<u>Engineer VI</u>	210
<u>Engineer V</u>	168
<u>Engineer IV</u>	138
<u>Engineer III</u>	125
<u>Engineer I/II</u>	102
<u>Resource Planner V</u>	138
<u>Resource Planner IV</u>	125
<u>Resource Planner III</u>	109
<u>Resource Planner I/II</u>	96
<u>Engineering Technician IV</u>	125
<u>Engineering Technician III</u>	109
<u>Engineering Technician I/II</u>	96
<u>CAD II</u>	111
<u>CAD I</u>	98
<u>GIS Specialist III</u>	109
<u>GIS Specialist I/II</u>	87
<u>Environmental Resource Specialist V</u>	138
<u>Environmental Resource Specialist IV</u>	125
<u>Environmental Resource Specialist III</u>	109
<u>Environmental Resource Specialist I/II</u>	96
<u>Environmental Resource Technician</u>	90
<u>Administrative</u>	67
<u>Engineering Intern</u>	53
<u>Information Technician I/II</u>	62

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2009.

Christopher B. Burke Engineering, Ltd.



CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.
With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the State of Indiana.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation

apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to

have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. Indemnity Clause: When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and the Client agrees not to modify or delete it:

Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees and acknowledges that Engineer shall be considered a third party beneficiary of those contracts into which this clause has been incorporated; and agrees to assume the entire liability for all personal injury claims suffered by its employees, including without limitation, claims asserted by persons allegedly injured on the Project; waives any limitation of liability defense based on the Workers' Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees, and consultants (the "Indemnitees") from and against any such loss, expense, damage or injury, including attorneys' fees and costs that the Indemnitees may sustain as a result of such claims.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of

any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is an operation, maintenance and repair activity for which the Engineer is not responsible.

